

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**RETTA ECKERT,**

**Plaintiff,**

**v.**

**Civil Action No. 3:08-CV-139  
(Judge John Preston Bailey)**

**FIA CARD SERVICES, aka  
BANK OF AMERICA**

**and**

**DISCOVER BANK, N.A.,  
Discover Financial, Inc. aka Discover Services, LLC**

**and**

**NATIONAL CITY MORTGAGE CO.,  
A subsidiary of National City Bank,**

**Defendants.**

**ORDER GRANTING NATIONAL CITY MORTGAGE CO.'S  
MOTION FOR PROTECTIVE ORDER [95] AND MOTION TO COMPEL[82]**

On August 24, 2009, came the Plaintiff, Retta Eckert, by counsel Aaron Amore, Esq., appearing telephonically and also came the defendant, National City Mortgage Co., by counsel, Peter G. Markham, Esq. and Bryant J. Spann, Esq, both appearing telephonically, for a hearing on National City Mortgage Co.'s Motion for Protective Order [95] and Motion to Compel [82].

Pursuant to FED. R. CIV. P. 37, the Court finds that the parties have made a good faith attempt to resolve the discovery issues without judicial intervention.

The Court first considered National City's Motion for Protective Order [95]. The Court finds that the parties agreed that the deposition scheduled for August 28, 2009 could be rescheduled

to September 25, 2009. Also the parties agreed to extend the Plaintiff's time for non-expert discovery from October 1, 2009 to October 25, 2009, which is thirty (30) days after the rescheduled time for the deposition.

Accordingly, it is **ORDERED** that **National City Mortgage Co.'s Motion for Protective Order [95] is GRANTED** and the Deposition of National City Mortgage shall be held on September 25, 2009. In addition, it is further **ORDERED** that the **non-expert discovery deadline** for the Plaintiff is extended to **October 25, 2009**.

Thereafter, the Court considered National City's Motion to Compel[82]. The Court finds based on the memoranda submitted to the Court and the oral argument of counsel as follows:

1. **National City Mortgage Co.'s Request for Production #3.** The Plaintiff should be required to provide unredacted copies of the e-mails requested in National City's Request for Production #3. The Court finds that according to *Hawkins v. Stables*, 148 F3d 379, 384 (4<sup>th</sup> Cir. 1998) if Plaintiff voluntarily discloses confidential attorney-client communication to a third party, the attorney-client privilege is waived. Therefore, National City Mortgage is entitle to review the unredacted copies. Thereafter, the parties agreed that the unredacted copies would be kept confidential only for review by National City Mortgage Co. In addition, the Plaintiff agreed to provide those unredacted copies to National City Mortgage Co. no later than Monday August 31, 2009.

2. **National City Mortgage Co's Interrogatory 25 and Request for Production 24.** The parties agreed that the discovery requested will be asked at the deposition of Retta Eckert and therefore Defendant National City should wait until after that deposition before arguing this issue. Accordingly the National City Mortgage Co. agreed to withdraw its Motion to Compel as to this

particular discovery issue until after the deposition of Retta Eckert, at which time it may be refiled, if necessary.

3. **National City's Interrogatories 13, 14, 15 and 16.** The Plaintiff objected to these interrogatories stating that the questions were not relevant nor likely to lead to relevant information in this case. The Court finds pursuant to Fed. R. Civ. P. 26 (b) that these questions may lead to relevant information and therefore grants National City Mortgage Co.'s motion to compel answers to these interrogatories. National City Mortgage Co. further agreed that for Interrogatory 16 it is seeking only a statement of Plaintiff's gross taxable income for those years. It is NOT seeking the actual tax returns.

Accordingly the Court **ORDERS** that the Defendant **National City Mortgage Co.'s Motion to Compel [82]** is **GRANTED** as to **National City Mortgage Co.'s Request for Production #3; and National City's Interrogatories 13, 14, 15 and 16.**

Further it is **ORDERED** that Plaintiff shall deliver the **CONFIDENTIAL** unredacted e-mails (**Request for Production #3**) to counsel for National City Mortgage Co. by Monday August 31, 2009 and the answers to **National City's Interrogatories 13, 14, 15 and 16** by September 8, 2009. It is further **ORDERED** that National City's Interrogatory 16 is accordingly revised to request only a statement of the Plaintiff's gross taxable income for those years, not the actual returns.

The Court further notes that the motion to compel answers to **National City Mortgage Co's Interrogatory 25 and Request for Production 24** has been withdrawn and a motion to compel these requests may be refiled if necessary after the deposition of the Plaintiff.

The Plaintiff's objections to any adverse rulings is duly noted.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear *pro*

se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

**DATED: August 27, 2009**

  
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**DAVID J. JOEL**  
**UNITED STATES MAGISTRATE JUDGE**